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**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA**

CASE NUMBER: 64921/2020

(1)	REPORTABLE: YES /NO
(2)	OF INTEREST TO OTHER JUDGES: YES /NO
(3)	REVISED
DATE 06/05/2026	 SIGNATURE

In the matter between: -

INNOCENT MAGDELINE KHOZA

PLAINTIFF

And

THE ROAD ACCIDENT FUND

DEFENDANT

JUDGEMENT

MATIKA AJ:

Introduction

1. The plaintiff has instituted action against the defendant for damages suffered as a result of personal injuries sustained in a motor vehicle collision occurred on 27 May 2017 at or Hinterland Street, Mamelodi East, Pretoria.
2. The plaintiff brought an application for default judgment against the Defendant, the ("RAF") in terms of Rule 31(2) (a) ¹ of the Uniform Rules of Court.

Facts

3. The plaintiff is an adult female person with a full legal capacity, and the Defendant is the Road Accident Fund, a juristic person established by virtue of Section 2(1) of the Road Accident Fund Act No 56 of 1996, as amended (hereinafter referred to as the "Act").
4. The plaintiff's claim against the defendant was lodged with the defendant on 3 December 2019.
5. The plaintiff issued summons against the defendant on 09 December 2020, and the summons served on the defendant by the sheriff on 10 December 2020.
6. Application for default judgment was served on the defendant on 22 November 2024 and notice of set-down for the 26 March 2026 was served on the defendant on 11 February 2026.

¹ Rule 31(2)(a) reads: "Whenever in an action the claim or, if there is more than one claim, any of the claims is not for a debt for liquidated demand and the defendant is in default of delivering of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in of notice of intention to defend or of a plea, the plaintiff may set the action down as provided in sub-rule (4) for default judgment and the court may, after hearing evidence, grant judgment against the defendant or make such an order as it deems fit

7. On 25 March 2026, the defendant delivered notice of intention to defend the matter and the defendant's Plea.
8. It is common cause that the plaintiff was represented by Adv Resenga and the defendant by Mr. Makgoka.
9. When the matter was called on 26 March 2026, the parties requested the court to stand the matter down until the end of the roll in the hope that the parties would be able to settle the matter. I agreed to stand the matter down until the end of the roll, but the matter could not be settled between the parties, the parties then indicated to the court that they both ready argue the matter.

Issues

10. This court is called upon to determine the issue of merits, future hospital and medical expenses by of an undertaking in terms of section 17(4) (a) of the Act), past and future loss of earnings, and general damages.

Rule 38(2) application

11. Application to present evidence of the plaintiff and her expert witnesses, and any other relevant witness by way of affidavit was sought unopposed and granted.

Merits

12. At the time of the collision, plaintiff was a pedestrian walking on the side of the road.
13. In her particulars of claim at paragraphs 4 and 5 thereof, plaintiff pleaded as follows:

“On the 27th May 2017, at approximately 18h30 in Mamelodi, a collision occurred when a motor vehicle with registration number C[...], there and then driven by T MONYAI, collided with the Plaintiff, who was then a pedestrian. The insured driver in essence caused the accident in one, more or all of the following respects; he failed to keep proper lookout; he drove at an excessive speed in the circumstances; he failed to keep the motor vehicle, of which they were the drivers, under any, alternatively, any proper control; he failed to apply brakes of his/her vehicle timeously or at all; he failed to keep the insured motor vehicle on its lane of travel and in so doing they could and should have avoided the collision; he failed to avoid the collision when by the exercise of reasonable care and skills they could or/ and should have done so; and/or failed to exercise the care a reasonable person would have exercised under the circumstances.”

14. Plaintiff also deposed to section 19(f) affidavit under oath in terms of the Act², on 29 November 2019, describing how the accident happened. She stated her version as follows:

“On the 27th of May 2017, at approximately 18h30, I was involved in a motor vehicle accident in Mamelodi East. I crossed Hinterland Street from South to North, whilst I was on the side of the road standing facing Westerly direction, a motor vehicle with registration number C[...] approached from East to West at a high speed, veered off the road on the right-hand side and struck me from behind.”

² Road Accident Fund, No 56 of 1996 (“Act”) As Amended.

15. The accident was reported to the South African Police , and the Accident report was completed by Constable Mahlase from the accident unit on 29 May 2017. The accident report confirms the date of the accident ,place of accident ,time of accident and the plaintiff's status as a pedestrian at the time of the accident.

Submissions on merits

16. The plaintiff's counsel argued that the plaintiff version is uncontested and therefore, the plaintiff is entitled to 100% on merits and no contributory negligence on the part of the plaintiff is applicable.
17. Mr. Makgoka, for the defendant, argued that the merits should be apportioned 70/30 in favour of the plaintiff he relied on the discovered hospital records from Steve Biko Hospital, where the plaintiff was treated, which indicates that the insured driver's vehicle was traveling slowly, Mr Makgoka submitted that the plaintiff's pleaded case is that the insured driver vehicle was travelling at an excessive speed therefore based contradictions between hospital records and pleaded cases the court should apportion the plaintiff's claim, it was further argued that plaintiff did not keep proper look out and did not take steps to avoid the accident however these submissions are not supported by evidence before Court.

Law

18. The liability of the defendant arises from its statutory duty in terms of the Road Accident Fund Act 56 of 1996, to compensate for damages suffered by the plaintiff as a result of the death or injuries caused by the injuries he sustained in the aforesaid motor vehicle collision.

19. As far as contributory negligence is concerned, it is trite that the defendant bears both the onus and duty to begin to prove contributory negligence on the part of the Plaintiff.
20. In *Blignaut v RAF* ³ at par [21] the court held that : “ *It is trite law that the defendant must prove the contributory negligence of the plaintiff. The defendant failed to discharge its onus in proving plaintiff s contributory negligence. I therefore find no contributory negligence on the part of the plaintiff*”.
21. In *Van Eeden v RAF* ⁴ para 13: the court held that: “*The onus to aver and to prove contributory negligence rested on the defendant.*”
22. In *Fox v RAF* ⁵ at paragraph [13], the full bench of this division held that: “*Where the defendant had in the alternative pleaded contributory negligence and an apportionment, the defendant would have to adduce evidence to establish negligence on the part of the plaintiff on a balance of probabilities*”.
23. The plaintiff’s version on section 19(F) affidavit remained unchallenged by the defendant, and the defendant’s basis for apportionment is reliance on the hospital records. The defendant did not adduce evidence to prove contributory negligence on the part of the plaintiff.

Hospital records

24. The defendant relied heavily on the version recorded from the hospital records as the bases for apportionment of the plaintiff’s claim. It is trite that the

³ (24248/2015) [2017] ZAGPPHC 940 (15 December 2017)

⁴ (19294/17) [2018] ZAGPPHC 783 (14 September 2018)

⁵ (A548/16) [2018] ZAGPPHC 285 (26 April 2018) Paragraph [13]

contents of hospital records constitute hearsay evidence, which is inadmissible in our law.

25. The Supreme Court of Appeal (The “SCA”) in *Rautini v Passenger Rail Agency of South Africa* ⁶ at paragraph 11, held that:

“The contents of the hospital records and medical notes constituted hearsay evidence, and it is trite that hearsay evidence is prima facie inadmissible. The discovery thereof by the appellant in terms of the rules of court does not make them admissible as evidence against the appellant, unless the documents could be admitted under one or other of the common law exceptions to the hearsay rule.”

26. Based on plaintiff’s unchallenged version, before me the insured driver was definitely negligent with regard to this collision. The plaintiff was outside the road at the time of the accident. The slightest degree of negligence is sufficient to satisfy the requirements of negligence under section 17(1) of the Act and consequently to render the RAF liable (see *Van der Walt and Midgley Principles and Cases Vol 1 par 96, Cooper Delictual Liability in Motor Law 77*”).
27. In light of the fact that the plaintiff needs to prove only 1% negligence on the side of the insured driver to succeed with a claim against the fund, the duty is on the latter to adduce evidence to the contrary or take a risk that judgment be given against him (*Ntsala v Mutual & Federal Ins Co Ltd 1996 (2) SA 184 (T) 190*).”

⁶ (Case no. 853/2020) [2021] ZASCA 158 (8 November 2021)

28. Based on the aforesaid, I conclude that the insured driver was 100% negligent of the Plaintiff's proven or agreed damages.

Quantum and expert's reports

29. The plaintiff appointed the following experts, and the reports have been duly served in terms of Rule 36 (9) (a) & (b) of the uniform Rules of Court: Prof Lukhele (Orthopaedic Surgeon); Dr Dippenaar (Ophthalmic Surgeon); Dr Moshokoa (Urologist); Prof Lekgwara (Neurosurgeon); Ms. Gladys Maluleke (Clinical Psychologist); Ms. Adelaide Phasha (Occupational Therapist); Esther Sempane (Industrial Psychologist) and Munro (Actuary).
30. The defendant did not appoint any experts and therefore the plaintiff's experts remained unchallenged.

General damages

31. The plaintiff is claiming an amount of R 2 500 000.00 (Two Million Five Hundred Thousand Rand) in respect of claim for general damages in her amended particulars of claim dated 10 March 2026.
32. The defendant accepted the plaintiff's claim for general damages and therefore this Court has jurisdiction to adjudicate the issue of general damages.

Injuries

33. The plaintiff sustained Mild traumatic brain injury, neck injury, right knee ligament injury (total knee replacement required), Right ankle fracture and quadriceps tear.

Sequalae

34. The plaintiff as result of the accident has the following sequelae: Recurrent Headaches, Memory problems, Short-concentration span, Forgetful, Difficulty to sleep at night, Has itchy eyes, Difficulty to kneel, Instability of the knee when she walked, She cannot walk for long distance, She had dizziness even when she is not hit by anything, Her Leg has become big and is swollen, She has enuresis; bed wetting on average 2 times a week, She can't sleep on the right side, She has generalized body pains, Bladder incontinence that culminated in nocturnal enuresis currently, She walks with a limp on the right, She walks with a support of a single crutch, Poor balance, She wears a right knee splint, Lethargic, Demotivated, Depressed, Post-traumatic stress disorder. She has to be escorted from area to area, even indoors. Claustrophobic in crowded areas, Blurred vision bilaterally, Tinnitus and blocked hearing bilaterally, and Anosmia that now affects her appetite. Enuresis occurs almost thrice a week, Dysuria, Poor sexual libido, Fatigue, Irregular and heavy menstruation, Middle insomnia, sleep-talking, nightmares, and visual and auditory hallucination. Phobias of traffic, Self-isolation, Irritability and mood swings.
35. Treatment received: She was taken to Mamelodi hospital where she was resuscitated and admitted for 3 days. She was transferred to Steve Biko hospital where surgery for the knee was done and discharged after a week. she continue to attend follow up until she was discharged.

Submissions on general damages

36. The plaintiff's counsel submitted that an amount of R 1 700 000-00 (One Million Seven Hundred Thousand) will be fair and reasonable in the circumstances.
37. Counsel for the plaintiff referred the court to the cases of: *Gaxo vs Road accident 2009/18711(2012)*; *Hall vs Road Accident Fund 2013(6J2) QOD 126 (SGJ)*; *Dlamini vs Road Accident Fund 2012 6 (6A4) QOD 68 (GSJ)*; and *Mohapi vs Road accident fund (2017/22595) [2020] ZAGPJHC 40 (10 February 2020)*.
38. I have considered all the above matters, and they are all distinguishable. In *Gaxo vs Road accident 2009/18711(2012)*, a 26-year-old male Plaintiff sustained severe brain injury, chest and upper limb injuries, as well as the fracture of the right humerus, pneumothorax, and corneal laceration. The court awarded general damages of R 900 000 in 2012, which in 2026 translates to R 1 735 000, the brain injury sustained by Ms Khoza in this matter is mild brain injury and not severe brain injury . In *Hall vs Road Accident Fund 2013(6J2) QOD 126 (SGJ)*, the male plaintiff, aged 39 years, sustained a fracture of the humerus, fractured ribs on the left side, a concussive head injury of moderate degree, a left 6th cranial nerve lesion, soft tissue of the neck and back, and various abrasions. He spent five days in the *ICU*. The court awarded R 700 000 in 2012, which in 2026 translates to R 1 339 000. In *Dlamini vs Road Accident Fund 2012 6 (6A4) QOD 68 (GSJ)* a male plaintiff aged 37 sustained a *Severe brain injury, fractured mandible, loss of teeth, soft tissue injuries to the cervical and lumbar spine*. The court awarded R850 000 in 2012, which in 2026 translates to R1 626 000. In *Mohapi vs Road accident*

fund (2017/22595) [2020] ZAGPJHC 40 (10 FEBRUARY 2020), a 44-year-old male Plaintiff sustained a moderate traumatic brain injury and a C7 vertebral fracture, as well as facial injuries, lacerations to the forehead, a dislocated knee, and a fracture of the right acromion (right shoulder). The Plaintiff was awarded R1 200 000 in 2020, which, in 2026, translates to R1 557 000.

39. Mr Makgoka, for the defendant, submitted that an amount between: R650 000 to R700 000.00 will be fair and reasonable and he referred the court to the case of *Hoffman v Road Accident Fund (2711/2020) [2022] ZAGPPHC* in that matter a 47 years old plaintiff suffered a concussive brain injury; fracture left distal fibula and disruption of the ankle joint; comminuted fracture right calcaneus; right distal radius fracture (comminuted) with dislocation; fracture head of the left 5th metacarpal; and emotional shock and trauma. The plaintiff was hospitalized, received medical treatment for his injuries, and will, in the future, require additional medical treatment. He was awarded R 700 000.00 in 2023, which is equivalent to R 836 000 in 2026, according to the Quantum Yearbook 2026 by Robert J. Koch, page 16.
40. The court was also referred to *Storm vs Road accident fund (17949/2018[2021] ZAGP JHC 12 (29 January 2021)* where the plaintiff sustained a fracture of his right ankle with serious complications, notably wounds that became septic and just would not heal; a soft tissue injury of the right knee; and a laceration of the forehead. His present complaints are: he has a stiff right ankle, which is always painful; two wounds on his right ankle just won't heal; he has difficulty sleeping due to the pain and the wounds; his right ankle is swollen most of the time and he has very limited movement in his right foot; his right knee is weak and he will probably need a knee

replacement within about two years; his right knee often gives in when walking; he has difficulty getting up from a seated position due to pain; he cannot climb stairs or any machinery at his job; he can no longer climb a ladder; he cannot lift or carry heavy objects as he cannot put weight on his right knee and right ankle; he cannot run or crouch; he has difficulty getting in and out of the bath, specifically due to the wounds; and he has difficulty walking or standing for extended periods. He was awarded R 450 000.00 in 2012 which translates to R 574 000.00 in 2026 value.

Approach to general damages:

41. The assessment of general damages is a discretionary function of the court, which has been described by the Supreme Court of Appeal (SCA), in the matter of *Road Accident Fund v Marunga*,⁷ at page 169 E-G as follows:

“This Court has repeatedly stated that in cases which the question of general damages comprising pain and suffering, disfigurement, permanent disability and loss of amenities of life arises, a trial Court in considering all the facts and circumstances of the case has a wide discretion to award what it considers to be fair and adequate compensation to the injured party....”

42. The exercise of this discretion referred to above is not always an easy task. In the matter of *Minister of Safety and Security v Seymour*,⁸ at par [17] the SCA held that:

⁷ 2003 (5) SA 164 (SCA)

⁸ 2006 (6) 320 (SCA)

“The assessment of awards of general damages with reference to awards made in previous cases is fraught with difficulty. The facts of a particular case need to be looked at as a whole and few cases are directly comparable. They are a useful guide to what other courts have considered to be appropriate, but they have no higher value than that...”

43. In the case of *Dikeni v RAF* 2002 (5) 171 GP Van Heerden J stated:

“Although these cases have been of assistance, it is trite law that each case must be adjudicated, on its own merit. No one case is factually the same as the other. It only provides a guide in the assessment of damages.”

44. The cardinal principle in making an award for general damages is that the Court has a large and broad discretion to award what the judge, in the circumstances considers to be fair and adequate compensation to the injured party for the *sequelae* of the injuries.⁹ The Court would generally have regard to the awards made in previous comparable cases, as a guide, whilst being mindful of the tendency for awards to be higher in recent years than they were previously.¹⁰ The corollary of this is that each case ought to be adjudicated upon the merits of its own peculiar facts.

45. In considering comparable case law, the following cases come to the fore:

- 45.1 In *TM Kgopyane v The Road Accident Fund* (Case number 43235/ 2014) ZAGPPHC 872 (22SEPTEMBER 2016) An awarded for general damages of R600 000.00 which is currently R 947 400.00 in 2026 value, was made to a

⁹ *Protea Assurance Company Ltd v Lamb* 1971 (1) SA 530 (A) at 534H-535A and *Ambrose v Road Accident Fund* 2011 (6C4) QOD 13 (ECP) at par 48.

¹⁰ *Ambrose v Road Accident Fund* at par 48.

female plaintiff who was 22 years at the time of the accident that occurred on 20 January 2013 in which she suffered a pelvic fracture which caused damage to her bladder resulting in permanent chronic incontinence, involuntary bladder contractions causing the bladder to leak urine when full. She also sustained fracture of the right superior rami as well as a left inferior ramus fracture along the link of the bone. She also had a chest contusion, injury to her right foot as well as a soft tissue injury to her neck and shoulder. She suffers from moderate depression and post-traumatic stress disorder.

45.2 In *Van Der Mescht v Road Accident Fund*,¹¹ the claimant (i.e., a female cyclist employed in public relations and marketing field) had sustained, among others, a head injury or brain injury of moderate degree; compression of the 10th and 12th thoracic vertebrae; a fracture of pelvis; left ankle and left scapula, and soft tissue injuries. Subtle, but yet significant post-traumatic neuropsychological disorder and mild residual spinal soft tissue syndrome (resulting in psychological reactions, the most significant of which is depression) resulted from the psychological *sequelae* of the brain injury. The court awarded R400 000 in 2010 as general damages, which currently equates to R874 000 in 2026.

45.3 In *Vukeya v Road Accident Fund*¹² the claimant (i.e. 43-year-old female cleaner) had sustained mild to moderate frontal lobe brain injury; orthopaedic injuries; injury to the lower back, and soft tissue injuries to the leg. The *sequelae* of the head injury resulted in short term memory and chronic

¹¹ *Van Der Mescht v Road Accident Fund* 2010 (6J2) QOD 42 (GSJ).

¹² *Vukeya v Road Accident Fund* 2014 (7B4) QOD 1 (GNP).

headaches. The court in 2013 awarded R330 000, currently equating to the amount of R721 000, for general damages.

45.4 In *Mngomezulu v Road Accident Fund*¹³ " Plaintiff sustained a moderately to severe brain injury, Compound right tibia-fibula fractures, a closed chest injury with lung contusion, and a 30 cm laceration on the right thigh. The Plaintiff reported the following orthopaedic and psychological complaints as at the time of the hearing hereof: pain and weakness in the right leg when walking or standing for prolonged periods. He walks with a pronounced right leg limp; mild memory difficulty; difficulty sustaining concentration; distractibility; has become impatient and irritable; mood swings with depressive phases; regret at having survived the collision; poor self-image with feelings of uselessness and worthlessness; disturbed sleep pattern with mid-cycle insomnia; daytime fatigue; increase in weight; situational anxiety; decrease in socialisation; diminished enjoyment of life; and concerns about the future. Plaintiff was awarded R600 000.00 in general damages, which translates to R1 248 000.00 in 2026 value.

46. I, have reviewed a number of comparable cases presented by counsel for both parties and considered the guidance they provide. It is, however, well established that no two cases are identical in terms of injuries sustained, the sequelae, and the anticipated impact on the claimant's future. Having evaluated the conspectus of evidence in this matter, I am of the firm opinion that an amount of R 1 000 000.00 (One Million Rand) represents a fair, just, and equitable award in compensation for the injuries sustained by the claimant.

¹³ (04643/2010) [2011] ZAGPJHC 107 (8 September 2011).

The undertaking

47. The plaintiff's experts has recommended future treatment for her problems and therefore that plaintiff is entitled to an undertaking interms of section 17 (4) (a) of the Road Accident Fund Act 56 of 1996.

Loss of earnings

48. The plaintiff is claiming R1 000 000.00 (One Million Rands) in her amended particulars of claim in respect of loss of income.
49. For purposes of justifying a claim for loss of income, Plaintiff's counsel relied heavily on excerpts from the various expert reports.
50. According to Esther Sempane (Industrial psychologist), report dated 06 March 2026, it is concluded that:

Pre-morbid employment potential

- 50.1 *"Ms Khoza is equipped with a Grade 11 level of education. She was employed as a Cleaner and General Worker in her previous positions. She was employed as a Domestic Worker at the time of the accident. A Copy of the Employment Certificate (30/07/2020) reflects that she has been under this employment as a full-time Domestic Worker since the 12th January 2013 until the period of the accident. She was earning R1 500.00 per month. She has not returned to her position after the accident. Given her reported good physical condition, she could have continued her job,*

enjoying straight-line increases in her earnings, or secured a position as a General Worker or Domestic Worker. She could have currently earned about R4 000.00 - R5 000.00 per month or more. The current suggested earnings for a domestic worker are R64 537.00 per annum (i.e., R5 378.00 per month) (R. Koch, Quantum Yearbook 2023). She would have retired at 65”.

Post-morbid employment potential

50.2 *“Plaintiff remained unemployed since the period of the accident. She received a disability grant for a year in 2024, and it was then discontinued. Ms. Khoza sustained the nature of injuries that have compromised her physical and mental state. She has relied on her good physical and mental state to secure work. As a result of the nature of her injuries, she has lost her position and has remained unemployed. She has been rendered unemployable and has suffered financial loss as a result of the accident.”*

Analysis of the evidence

51. Prof P.L Lukhele (Orthopaedic Surgeon), reported that the plaintiff sustained injuries to her right knee and ankle and still remains with symptoms. The right knee is reported to require surgery to correct its condition, but is expected to experience degenerative changes in the knee necessitating a total knee replacement surgery. Surgery to remove internal fixatives in the right ankle is indicated. Certificates of undertaking to address her problems, conservative treatment, and physiotherapy are recommended.

52. Prof Lekgwara (Specialist Neurosurgeon), reported that plaintiff suffers from post-concussion headaches and requires treatment. The Urologist (Dr Moshokoa) has recommended treatment for her problems and therefore plaintiff is entitled to undertaking in terms of section 17(4)(a) for future treatment.
53. The Specialist Neurosurgeon (Prof. P.L. Lekgwara) further agrees with the Clinical Psychologist (Ms. Gladys Maluleke) that she has developed neuropsychological problems. The Clinical Psychologist reported that her mental condition has left her with psychological problems, which have affected her ability to live independently and to cope with social amenities. Psychotherapy is recommended to facilitate her coping.
54. Ms Adelaide Phasha (Occupational Therapist), reported that plaintiff presents with significant physical restrictions that have excluded her from performing unskilled work. She, however, would not secure sedentary work because of her low educational level. She is expected to remain unemployed.
55. From the above it is clear that, Plaintiff would have relied on her good physical and mental state in continuing with her employment or securing any position of an unskilled nature, as was the case pre-injury. Post-injury, she is no longer suitable for such work. She is no longer a candidate for the open labor market and would remain unemployed. Her quality of life has been compromised.
56. The industrial psychologist concluded that the plaintiff sustained the nature of injuries that have compromised her physical and mental state. She has relied on her good physical and mental state to secure work. As a result of the

nature of her injuries, she has lost her position and has remained unemployed. She has been rendered unemployable and has suffered financial loss as a result of the accident. The plaintiff's expert's opinions are uncontested.

Applicable legal principles

57. In respect of a claim for loss of earnings and/or earnings capacity the following trite legal principles are applicable:

57.1 In the matter of *Southern Insurance Association Ltd v Bailey NO*,¹⁴ His Lordship Appellate Justice Nicholas stated as follows:

“Any enquiry into damages for loss of earning capacity is of its nature speculative, because it involves a prediction as to the future, without the benefit of crystal balls, soothsayers, augurs or oracles. All that the court can do is to make an estimate, which is often a very rough estimate, of the present value of the loss. It has open to it two possible approaches:

- *One is for the judge to make a random estimate of an amount which seems to him to be fair and reasonable. That is entirely a matter of guesswork, a blind plunge into the unknown.*
- *The other is to try to make an assessment, by way of mathematical calculations, on the basis of assumptions resting on the evidence. The*

¹⁴ 1984 (1) SA 98 AD at 116H

validity of this approach depends of course upon the soundness of the assumptions, and these may vary from the strongly probable to the speculative. It is manifest that either approach involves guesswork to a greater or a lesser extent. But the court cannot for this reason adopt a non-possums attitude and make no award.”

57.2 In *Walker v Road Accident Fund*,¹⁵ Durban Division the court not only with approval referred to the aforementioned judgement of Nicholas AJ but also continued as follows:

“This principle applies with equal force to the manner in which a judge is called upon to deal with any aspect of the assessment of the loss of earnings – if it is relevant to the assessment, he/she must make the best of the material before the court, notwithstanding that the result may well be open to criticism.”

Actuarial calculations

58. An actuarial calculation was obtained from Munro Actuarial Consulting, the report dated 09 March 2026, the calculations is based on the uncontested report of the plaintiff's industrial psychologist, Ms Esther Sempene, dated 06 March 2026. The basis of the calculation of the loss of income appears in paragraph 41 for the income had the accident not occurred and in paragraph 4.2 for the income having regard to the accident.
59. The Actuary deducted a 5% contingency on the past loss of income and a 15% Contingency on the future pre-morbid contingencies and 0 % on the post-morbid scenario as the plaintiff is considered unemployable in the open labour market.

¹⁵ Case no. 17955/04 reported on the 28th of October 2009 in the High Court of South Africa Kwazulu Natal

60. After application of the above contingencies, the net loss is R 709 695.00

Submissions on loss of income

61. During the argument and on the heads of the argument, plaintiff counsel argued that plaintiff is entitled to an amount of R 709 695.00 as actuarially calculated.
62. Mr Makgoka, for the defendant, argued that the plaintiff, due to the accident in question plaintiff received disability grant from 1 January 2014 to 1 January 2025 in the amount of R 25 920.00 and asked the court to deduct the disability grant from any award the court would make for loss of income, but however the defendant did not plead the issue of deductibility of the disability grant in the pleadings before the court in this matter.
63. It is trite that it is not permissible for the trial court to have recourse to the issues falling outside the pleadings when deciding a case.
64. The Supreme Court of Appeal (The “SCA”) In *Rautini v Passenger Rail Agency of South Africa*¹⁶ held as follows on paragraph 21.
- “A party has a duty to allege in the pleadings the material facts upon which it relies. It is impermissible for a plaintiff to plead a particular case and seek to establish a different case at the trial. It is equally not permissible for the trial court to have recourse to issues falling outside the pleadings when deciding a case”.*

¹⁶ (Case no.853/2020) [2021] ZASCA 58 (8 November 2021)

Contingencies

65. Plaintiff counsel argued for a 5% Contingency on the past loss of income and a 15% Contingency on the future pre-morbid; on the other hand, Mr Makgoka for the defendant argued for 30% Contingency on the past loss of income and 15% contingency on the future pre-morbid.

66. The Supreme Court of Appeal in *Road Accident Fund v Guedes*,¹⁷ referred with approval to *The Quantum Yearbook*, by R Koch, under the heading 'General contingencies', where it states that when:

"[In] assessing damages for loss of earnings or support, it is usual for a deduction to be made for general contingencies for which no explicit allowance has been made in the actuarial calculation. The deduction is the prerogative of the Court."

The term "*normal contingency*" usually refers to a 5% contingency deduction in respect of past loss of income and 15% in respect of future loss of income.

67. In my view, therefore, in the present matter, the plaintiff is, however, no longer the woman she was before the accident and therefore, I am of the view that a 5% contingency on the past loss of income is fair and reasonable, and there is no dispute on the future pre-morbid between the parties they both agreed on 15% pre-morbid contingency and I see no reason to interfere on this agreement.

¹⁷ 2006 (5) SA 583 (SCA) para 9.

68. The result of the above finding is the following in respect of the plaintiff's past and future loss of income, with reliance on the calculations performed by the plaintiff's actuary:

	Uninjured	Injured
Past loss:	R292 700.00	-
	Less 5% contingencies	
	=R 278 065	
Future loss:	R 507 800.00,	-
	Less 15% Contingencies	
	=R 431 630.00	
Total loss earnings	R 709 695.00	

Conclusion

69. The plaintiff therefore succeeds in her claim for damages in a total amount of R 1 709 695, 00. Costs should follow the event. I have noted the Contingency Fee Agreement entered into between the parties on 16 February 2018, which appears to be statutorily compliant.

Order

70. In the circumstances, the following order is made:

1. The Defendant is declared to be liable for 100% of the Plaintiff's proven damages.
2. The Defendant is ordered to pay the Plaintiff an amount of R 1 709 695, 00 (One Million Seven Hundred and Nine Thousand Rand, Six Hundred and Ninety Five Rands) in respect of the Plaintiff's claim for General

Damages and Loss of Earnings, payable into the Plaintiff's attorneys of record's trust account with the following details:

ACCOUNT HOLDER	: J M MODIBA ATTORNEYS
BANK NAME	: STANDARD BANK
BRANCH CODE	: 010545
ACCOUNT NUMBER	: 0[...]
TYPE OF ACCOUNT	: TRUST ACCOUNT
REF	: REF: MR MODIBA/MIK/TPC1631

3. The amount in paragraph 2 above is computed as follows:
 - 3.1 General damages R 1 000 000.00
 - 3.2 Loss of income R 709 695.00
4. The Defendant shall be liable for interest on the aforementioned amount from the 15th day after date of this order, at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended.
5. The Defendant is ordered to furnish the Plaintiff with an undertaking in terms of Section 17 (4) (a) of the Road Accident Fund Act 56 of 1996, for the payment of 100% of the costs of future accommodation in a hospital or a nursing home or treatment of or rendering of a service or supplying of goods to the injured after such costs have been incurred and on proof thereof, relating to the injuries sustained by the Plaintiff on 27 May 2017.
6. The Defendant is ordered to pay the Plaintiff's taxed or agreed party and party costs on the High Court scale, in accordance with Rule 70 of the High Court, subject to the discretion of the taxing master.

7. The costs of Adv R Resenga, briefed and appearing for trial, shall be taxed on scale B in accordance with Rule 69 and Rule 70 of the High Court.
8. The above costs shall be payable within 14 days from the date upon which the costs are taxed by the taxing master and/or agreed between the parties.
9. In the event that the Defendant fails to pay said costs timeously, it shall be liable for interest on the taxed and/or agreed party and party costs at the prevailing rate of interest, as determined from time to time, in terms of the Prescribed Rate of Interest Act, 55 of 1975, as amended.

F MATIKA

Acting Judge of the High Court
Gauteng Division, Pretoria

Date of Hearing: 26 March 2026
Judgment delivered: 04 May 2026

APPEARANCES:

For the Plaintiff:
Attorney for the Plaintiff:

Adv Resenga
J M Modiba Attorneys, Pretoria.

For the Defendant:

Mr Makgoka

Attorney for the Defendant:

State Attorney, Pretoria